

**Report to Congress  
On the  
Use of Other Transaction  
Authority for Prototype Projects  
In FY 2022**



Office of the Under Secretary of Defense  
for Acquisition and Sustainment

April 2023

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**DEPARTMENT OF DEFENSE USE OF OTHER TRANSACTION AUTHORITY  
FOR PROTOTYPE PROJECTS  
FY 2022**

**Introduction**

This report fulfills the Department of Defense (DoD) FY 2022 reporting requirement on the use of the Other Transaction (OT) Authority, pursuant to section 873 of the John S. McCain National Defense Authorization Act (NDAA) for FY 2019 (Public Law 115-232), amended by section 819 of the NDAA for FY 2020 (Public Law 116-92). In addition, the Joint Explanatory Statement (JES) accompanying H.R. 6157, the Department of Defense and Labor, Health, and Human Services, and Education Appropriations Act for 2019 (Public Law 115-245), page 153, requests that the Department report to the House and Senate Appropriations Committees on OTs on a quarterly basis beginning in FY 2019. Lastly, the JES accompanying H.R. 2617, the Consolidated Appropriations Act, 2023 (Public Law 117-328), page 85, Division C, requests Under Secretary of Defense for Acquisition and Sustainment, not later than 60 days following the enactment of this Act, submit a report on the Department's use of OT Authority (OTA) agreements in FY 2022 to include an analysis of the relative success rates of follow-on production contracts initiated after the conclusion of initial OTA agreements in comparison to lessons learned from conventional Federal Acquisition Regulation-based acquisitions.

The Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSDA&S)), Defense Pricing and Contracting (DPC), is responsible for preparing the report and promulgation of policy and guidance on OTs for prototype projects, specifically under title 10 U.S.C. § 4022. This FY 2022 report to Congress combines the authorization and appropriation requirements into a comprehensive annual report. Collecting, consolidating, and analyzing the data required a manual data call to the DoD components with OT authority because the existing Federal Procurement Data System (FPDS) module for OT reporting does not capture all the data elements and information required for the report. This FY 2022 report to Congress also includes the new requirement to collect information on the initial and follow-on agreements/contracts and information on the primary consortia members, if applicable. Regrettably, due to the significant resources, time, complexity, and coordination necessary to prepare the response, this is being submitted after the reporting requirement suspense.

The Principal Director, DPC obtained inputs from the Military Departments and Defense Agencies on activities that used the title 10 U.S.C. § 4022 authority. Appendix A of this report lists each active OT award reported in FPDS for FY 2022, with the following data elements: the contracting agency, major command, contracting office, award/effective date and completion date (period of performance), product service code, awardee/vendor, award value, dollars obligated, primary consortia member, agreements officer, appropriation, budget line item, consortium, total expenditures for the reporting period, purpose/program goal/description, status of the project, a brief description of successes/challenges for case examples, and follow-on production data. The OTs include follow-on production, which are identified in the report, and include the corresponding prototype OT identification number, estimated cost, period of performance, deliverables, delivery dates, and source of funding.

## Background

Congress provided the Department additional authority and flexibility in the use of OTs for prototypes to spur innovation and attract non-traditional and small businesses with leading-edge technologies to enable more rapid acquisition of innovative technologies. Therefore, the Department is pursuing innovative business practices to increase the use of OT authorities to provide the agility and speed necessary to outpace our adversaries' capabilities. The title 10 U.S.C. § 4022 authority offers the Department broad flexibility in terms of the award process. Virtually all terms and conditions of an OT are negotiable between the parties, including data rights, payment terms, and dispute processes. OTs for prototype project authority was expanded to all DoD components with acquisition authority in the USD(A&S) policy memorandum "Authority for Use of Other Transactions for Prototype Projects Under 10, United States Code, Section 2371b," dated November 20, 2018. The Department also released an updated "Other Transactions Guide" at the same time to help educate the acquisition community on their appropriate use. The Department is developing a subsequent update to the "Other Transactions Guide" scheduled for release in FY 2023. As a result of Congress' provisions and the Department's efforts, the acquisition community continues to use OTs to acquire innovative products and services in support of rapidly evolving Warfighter needs.

## Analysis

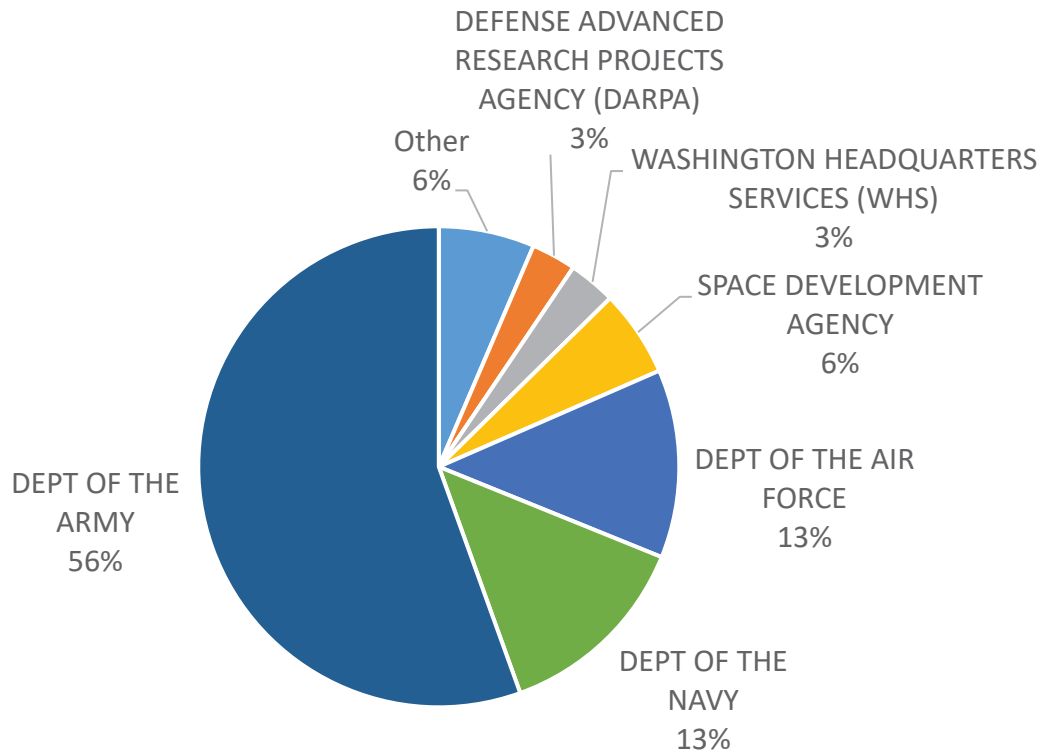
The Department has experienced significant growth in the use of OTs for prototype projects over the past five fiscal years, as measured by the total number of OT actions and dollars obligated set forth in the table below for FY 2017 through FY 2022.

Department of Defense		
Fiscal Year	Total Actions	Total Dollars
2017	496	\$2,200,262,428
2018	808	\$3,982,545,323
2019	1,702	\$7,378,804,576
2020	3,234	\$16,023,234,473
2021	4,086	\$14,291,798,136
2022	4,391	\$10,696,967,709

The table shows the increase in the number of OTs and the amount obligated for these years, with the number of actions increasing from 496 in FY 2017 to 4,391 in FY 2022 and total dollars obligated increasing from \$2.2 billion in FY 2017 to a peak of \$16.02 billion in FY 2020. It should be noted that 52 percent of OT obligations in FY 2020 were for efforts related to combatting the COVID-19 virus. In FY 2022, the Department saw a continuation of the trend from FY 2021 where the total number of OT actions again increased, with a further decrease in total dollars obligated. Though dissimilar to the FY 2017 through FY 2020 trend activity, the divergence in FY 2022 results from the steady decline in issuance of high-dollar OTs associated with COVID-19 related efforts as compared to FY 2020. Additionally, obligations unrelated to COVID-19 efforts amount to \$9.8 billion, which is the first year obligation decreased from the year prior (\$10.1 billion in FY 2021). This slight decrease

supports the analysis that OT spend has stabilized. The Department anticipates that OT spend for FY 2023 will remain consistent with FY 2022 spend.

### FY 2022 Obligations by Contracting Agency

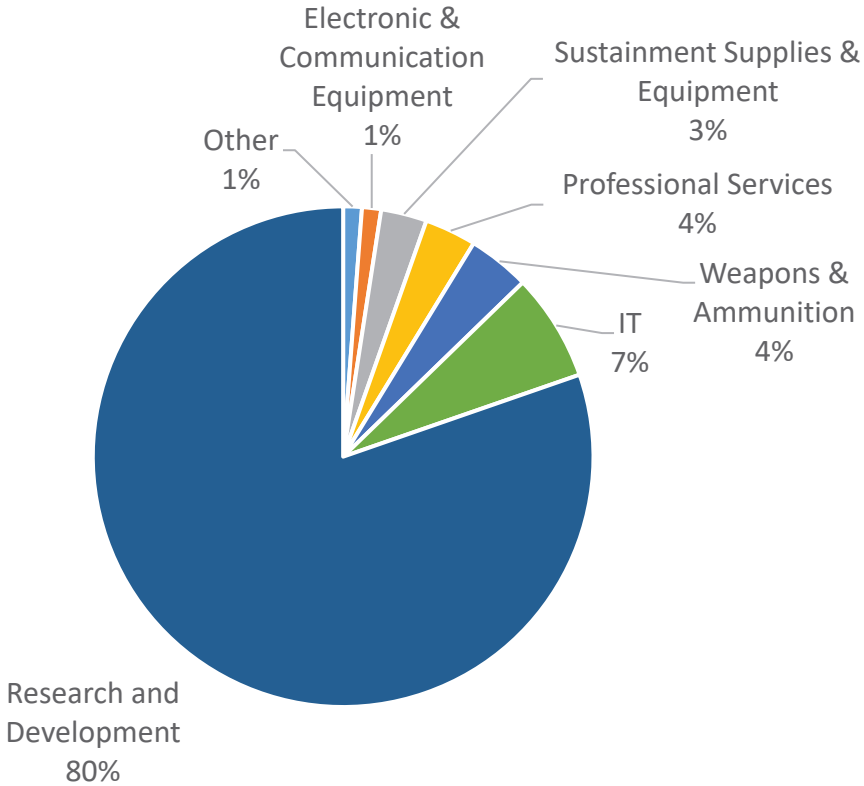


**Figure 1 – FY 2022 OT Obligations by Contracting Agency**

Figure 1 presents the FY 2022 obligations by DoD contracting agencies with OT for prototype project authority. Consistent with prior years, the Army spending was the largest at 56 percent of obligations followed by the Navy and Air Force both at 13 percent, Space Development Agency<sup>11</sup> at six percent, Washington Headquarters Service and Defense Advanced Research Projects Agency both at three percent, and twelve additional commands and agencies at less than two percent each. The Army obligations are higher than the other components because they awarded OTs on behalf of others, in some cases through Army-awarded consortia OTs that components can leverage to meet their own requirements. The Army dropped from 82 percent of obligations in FY 2020 to 56 percent in FY 2022, which reflects the reduction in COVID-19 spend and is comparable to the Army’s portion of OTs in FY 2019 at 68 percent before the COVID-19 virus.

<sup>1</sup> The Space Development Agency (SDA) reported as a separate agency in FY 2022. In FY 2023, the SDA became part of the Air Force, and its obligations will be reported under the Air Force in the Department’s next report to Congress.

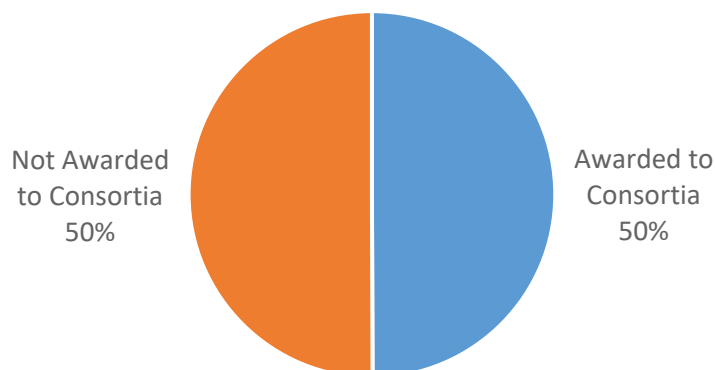
# FY 2022 Obligations by Spend Category



**Figure 2 – FY 2022 OT Obligations by Spend Category**

Figure 2 shows the distribution of FY 2022 OT obligations by federal category management spend category based on product service code descriptions. The authority under title 10 U.S.C. § 4022 is designated for carrying out OT prototype projects focused on research, development, test, and evaluation activities directly relevant to enhancing the mission effectiveness of the military. As a result, the large majority (80 percent) of FY 2022 obligations are under the Research and Development category.

## FY 2022 OT Obligations by Consortia



**Figure 3 – FY 2022 OT Obligations with Consortia Breakout**

Figure 3 provides a breakout of the FY 2022 FPDS reported OT prototype project obligations awarded to consortia (50 percent) and other than consortia (50 percent). This is consistent with the obligation trend from the previous year, where obligations to consortia dropped from 74 percent in FY 2020 to 51 percent in FY 2021, reflecting the proportional drop in COVID-19 spend noted earlier in this report.

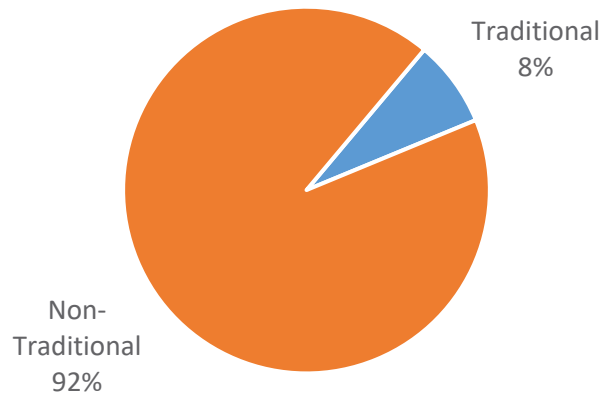
Each consortium is made up of contractors, nonprofit organizations, and academic institutions in a specific technology area established to offer the Department a pool of stakeholders to help develop new technologies or processes that further innovation. OTs for prototype projects permit numerous types of arrangements, including awards to a consortium for performance by its members, a single company, prime-subcontractor, joint venture, or partnership. Each arrangement has benefits and challenges depending on the nature of the requirement. In each case, the government acquisition team is expected to possess the knowledge, business acumen, and judgment necessary to determine the appropriate arrangement for the requirement.

The Department considers the consortium model beneficial to help stimulate innovation and attract non-traditional contractors. However, there are challenges when using the consortium model, including FPDS reporting, the presence of competition for awards to be made by consortium managers, accountability of performance with the authorized agent, and intellectual property rights, which are being evaluated for incorporation into the upcoming OT Guide Revision.

In response to these challenges, the Department expects to issue policy guidance to improve the data collection process for those OT prototype projects awarded under the consortium model to consortium members performing individual projects under the OT. Under this construct, individual consortia members will be asked to obtain a Unique Entity Identifier (UEI) from the System for Award Management (SAM). On June 25, 2022, the OT module of FPDS was updated to capture whether an OT award is made to a consortium (Yes/No answer).

If the response in the FPDS data field is “Yes” then the system prompts the user to identify the primary consortia member’s Unique Entity ID (UEI). The UEI will pull over the primary consortia member’s name and address information from the SAM. This change provides visibility into the individual business performing work on a transaction awarded to a consortium. Therefore, all the participants to the transaction are now being collected in FPDS using the existing vendor name data field and the new consortia member data field.

FY 2022 OT Obligations by Traditional and Non-Traditional Contractors



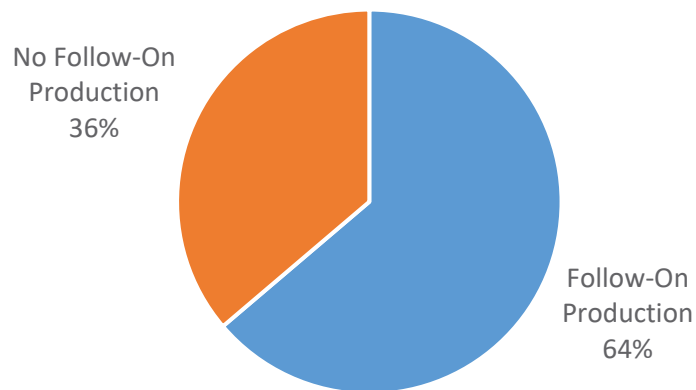
**Figure 4 – FY 2022 OT Obligations by Traditional and Non-Traditional Contractors**

Figure 4 shows the breakout of OT prototype project obligations in FY 2022 awarded to traditional and non-traditional defense contractors (NDCs). The definition of an NDC (paraphrased from title 10 U.S.C. § 3014) is a company that has not done business with DoD within the last year or does not meet the full coverage requirements for cost accounting standards.

An NDC award is defined as significant participation by a non-traditional defense contractor. Significant participation is defined in the Other Transaction Guide glossary. In evaluating the significance of expected NDC participation, the Agreements Officer is expected to consider input from relevant technical advisors (Legal, Engineering, Program Management, Pricing, Logistics, etc.) in assessing the totality of the circumstances for each proposed prototype project before making an independent judgement as to the significance of expected NDC participation.

In FY 2022, 92 percent of obligations went to NDCs and the other 8 percent went to traditional contractors. Congress authorized OTs for prototype projects to bolster innovation in military use, and the OT authority facilitates acquisitions with NDCs by removing some of DoD’s traditional contracting rules.

## FY 2022 OT Projects with Follow-On Production

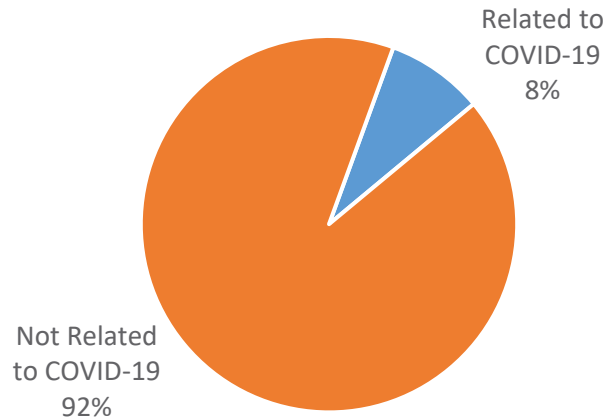


**Figure 5 – FY 2022 OTs with Follow-on Production**

Figure 5 shows the breakout of OT prototype projects with potential follow-on production included in the prototype award. Follow-on production may only be included as an option in the agreement when the underlying prototype was competitively awarded, and can only be awarded once the prototype project is successfully completed. In FY 2022, 64 percent of OT prototype projects included the option for follow-on production or currently involved follow-on production capability while the other 36 percent did not include the production capability. This is consistent with the follow-on production trend from FY 2021. In FY 2022, the Department added elements to the data call requiring Components to manually identify the follow-on production OT linked to an initial prototype agreement, as well as any follow-on Federal Acquisition Regulation (FAR)-based contracts that may have been used instead of follow-on production OTs. This change will give the Department more visibility into how many prototype OT agreements lead to follow-on production efforts.

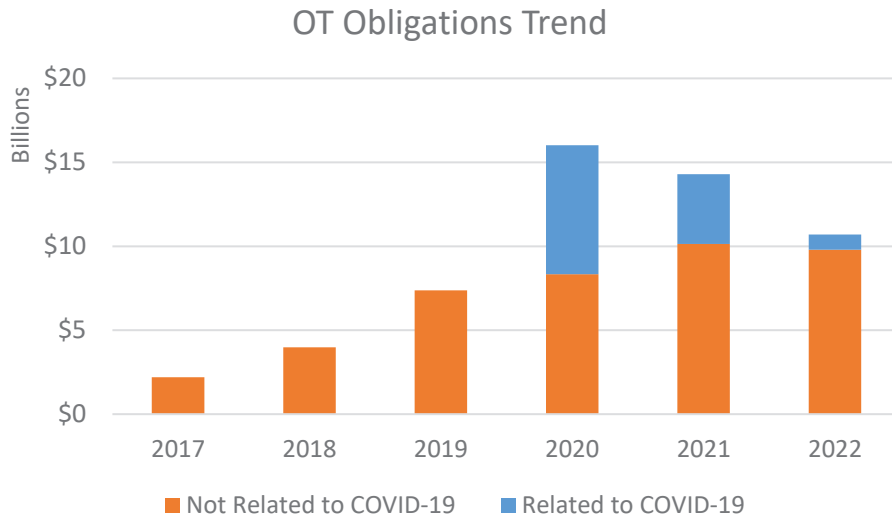


### FY 2022 OT Obligations Related to COVID-19



**Figure 6 – FY 2022 OT Obligations related to COVID-19**

Figure 6 shows the breakout of FY 2022 OT prototype project obligations that supported efforts to combat the COVID-19 virus. In FY 2022, 8 percent of OT obligations related to COVID-19 efforts while the other 92 percent did not relate to COVID-19. This shows a continued decrease from FY 2021, where 29 percent of the total obligations related to supporting COVID-19 efforts and FY 2020, where 51 percent of obligations supported COVID-19 efforts. This steady decline reflects the dwindling threat of the COVID-19 pandemic to national security concerns from its 2020 peak.



**Figure 7 – FY 2017-2021 OT Obligations Trend**

Figure 7 shows the OT obligated amounts over the past five years. The breakout in FY 2020 through FY 2022 of OT prototype project obligations that supported efforts to combat the COVID-19 virus show that the trend for OT obligations related COVID-19 continues to

decrease, as the nation is further removed from the height of the pandemic. In FY 2022, there was a slight decrease in non-COVID-19 related transactions for the first time, as OT spend is expected to continue stabilizing moving forward.

## **Conclusion**

As required by section 873, the Department is leveraging the data collected and included in this report to update policy and guidance related to the use of OTs. As noted in the introduction, FPDS does not capture all the data elements required for this report. The Department continues to establish standard reporting formats to improve future collection of OT data as described in the consortia section by providing policy guidance to improve data collection and reporting requirements on OT for prototype project awards. The planned reporting format will improve transparency and accountability on the use of OTs for prototype projects, including those issued under consortia arrangements.

The Department plans to submit the FY 2023 report to Congress on the use of OTs by the end of March 2024. As noted earlier, the changes to FPDS will not be deployed in time to use on the FY 2023 report, so the Department will continue using the manual data collection process described in the introduction to collect the required information from the DoD components. Finally, due to the current restrictions of FPDS and the time required for manual data collection, the Department was not able to collect the data required to provide an analysis in response to the requirement put forward by the JES accompanying H.R. 2617, the Consolidated Appropriations Act, 2023. The Department expects to provide an analysis of FY 2022 and FY 2023 data on the relative success rates of follow-on production contracts initiated after the conclusion of initial OTA agreements in comparison to lessons learned from conventional FAR-based acquisitions in the FY 2023 report to Congress.

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